

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Robert B. Hope

Serial No.: 10/033,518

Filed: December 28, 2001

For: WEATHER SEAL HAVING ELASTOMERIC MATERIALS
ENCAPSULATING A BENDABLE CORE

Examiner: Jerry E. Redman

Art Unit: 3634

Atty. Docket: ULB-003CV

REQUEST FOR REINSTATEMENT OF APPEAL AND SUPPLEMENTAL BRIEF

UNDER RULE 121(2)

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

The Examiner issued an Action dated July 16, 2003 in response to Applicant's Appeal Brief filed April 28, 2003. There has been no Examiner's Answer nor does the record show that the Board remanded the case to the Examiner.

The record does not show that proper procedure was followed for reopening prosecution. There is no statement of record that prosecution has been reopened. There is nothing of record that a supervisory Examiner has found justification for reopening prosecution (See MPEP 1208.01, 1st paragraph).

The issues raised by the new prior art have been addressed in the Applicant's Brief. First as to the new Japanese reference, it relates to making a mixture of rubber including recycled rubber and forming the mixture into a weather seal. This is merely a general reference on use of recycled material, which has already been submitted not of probative of unpatentability (See Page 5 of the Appeal Brief). Claims 1 and 4-8 call for a substrate of recycled elastomeric material which is encapsulated by virgin material. The Japanese reference is for an integrally formed structure, nothing like what is claimed. The other new reference, Keys, is redundant in that the use of overlaying extrusions in rubber seals was even mentioned by Applicant (See page 2, lines 1-6, of Applicant's specification). It is beyond per adventure that there is nothing except Applicant's disclosure to suggest (i.e., in hindsight) using a substrate of recycled material over a core

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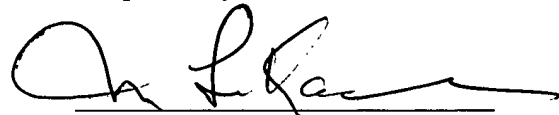
covered by an encapsulating layer, let alone specifically as claimed. Clearly, the combination of references is improper under a long line of cases recently including In re Vaeck, 20U.S.P.Q. 2d 1438, 1442 (Fed. Cir. 1991).

The rejection does not treat the claims in three groups as segregated on page 3 of the Appeal Brief. Claims 5-7, 9 and 10 deal with the core structure and its construction. There is nothing in the principal references (the Japanese reference and Keys) applied against these claims which has anything to do with what is described in these claims. The secondary references were already of record before the Appeal and never used against these claims, and clearly are no better than Weichman, discussed in detail in the Appeal Brief.

Accordingly, since proper procedures for reopening prosecution do not appear to have been used and since the new rejections are improper and untenable for reasons similar to those of record, unless the Examiner withdraws the rejection and allows this application, prosecution should not be reopened and the Appeal should proceed as required by the Rules of Practice.

Dated: September 3, 2003

Respectfully submitted,



Martin LuKacher
Attorney for Applicant(s)
Registration No. 17,788

South Winton Court
3136 Winton Road South, Suite 204
Rochester, New York 14623
Telephone: (585) 424-2670
Facsimile: (585) 424-6196